HIGHWAY COMMISSION: Whether company, who without consent of commission placed gasoline pumps on highway, may be required to remove same for widening of highway.

July 14, 1933.

Hon. James D. Adams, Chairman,
State Highway Commission,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter in part as follows:

"The State Highway Commission has designated and selected State Road No. 31 to pass through the town of Crothersville on and over an existing street of that town, which has been platted and established to a width of 50 feet between property lines. The town of Crothersville has a population of less than 3,500, as determined by the 1930 census.

"The State Highway Commission is now engaged in the widening of the pavement along that street. The improvement by widening the street necessitates the removal of some gasoline pumps which have been placed on the street by the Garriott Motor Company without the consent of the State Highway Commission. The question arises as to whether or not the State Highway Commission can legally require the Garriott Motor Company to remove their pumps beyond the construction limits and beyond the property line of the street."

You submit the following questions:

1. Under the above conditions, is it legal and proper for the State Highway Commission to require the Garriott Motor Company to remove said gasoline pumps entirely off of the street as established, at the expense of the owner of the tanks and without damages in connection with their removal?

2. Would it be legal for the State Highway Commission to require the removal of the gasoline pumps beyond the property line a sufficient distance so that cars, when being serviced with gasoline from the pumps, would not be on the street?
Your letter is not entirely clear as to by what authority the gasoline pumps referred to were placed in the street; nor for how long they had been so placed. You do, however, state that they were located in the street without the consent of the State Highway Commission. A fuller statement on the above points is desirable. However, I shall endeavor to answer your questions upon well-settled principles, which will be sufficient in the absence of some special circumstances not indicated in your letter.

I quote from the case of Hall, et al. v. Breyfogle, 162 Ind. 494, at page 500, as follows:

"Title by prescription can not be acquired by adverse possession of land dedicated to the public for streets and alleys in the laying off or the platting of a town or an addition thereto. Such a dedication is to the public, and not to the municipality. The latter holds as trustee, and can not surrender the grant, except as the statute provides, nor lose the same by the negligence or laches of its officers. Sims v. City of Frankfort, supra; Collett v. Board, etc., 119 Ind. 27, 32; 4 L. R. A. 321; Wolfe v. Town of Sullivan, supra; Cheek v. City of Aurora, 92 Ind. 107."

The same principle was announced by the court in the case of City of Princeton v. Hanna, 187 Ind. 582, at page 587, where the court said:

"One encroaching on a highway dedicated to public use acquires no rights by prescription or adverse user."

In the absence, therefore, of some special circumstances, it is clear, in my opinion, that the Garriott Motor Company has no legal right to have their gasoline pumps in the street. Section 16 of chapter 18 of the Acts of 1933 gives the state highway commission jurisdiction over the street referred to.

Acts of 1933, page 78;

The answer to your first question is in the affirmative. In my opinion, however, your second question should be answered in the negative.